

REMARKS

At the time of the Office Action dated October 5, 2005, claims 1-20 were pending and rejected in this application. Claims 1 and 10 have been amended, and claims 4 and 13 have been cancelled. Care has been exercised to avoid the introduction of new matter. Specifically, claims 1 and 10 have been amended by respectively incorporating the limitations of claims 4 and 13 therein, and consequently claims 4 and 13 have been cancelled. Applicants submit that the present Amendment does not generate any new matter issue.

CLAIMS 1-20 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON SCHEUSSLER ET AL., U.S. PATENT NO. 6,366,950 (HEREINAFTER SCHEUSSLER), IN VIEW OF ALLAVARPU ET AL., U.S. PATENT NO. 6,839,748 (HEREINAFTER ALLAVARPU)

On pages 2-8 of the Office Action, the Examiner concluded that one having ordinary skill in the art would have been motivated to modify Scheussler in view of Allavarpu to arrive at the claimed invention. This rejection is respectfully traversed.

Initially, Applicants note that independent claims 1 and 10 have been amended to recite that a predetermined value of the marker indicates that ordering is not required. Thus, claims 1 and 10 each recite a determination of whether or not message order is preserved is based upon the marker associated with the message. This limitation is neither taught nor suggested by Scheussler and Allavarpu, either alone or in combination.

Prior to discussing the prior art, a discussion of Applicants' claimed invention will help clarify the distinctions between the Examiner's combination of Scheussler and Allavarpu and the claimed invention. Applicants' invention is directed to a methodology and system for handling messages for which message order is to be preserved in some instances, yet for other instances, message order does not have to be preserved (see 1st full paragraph on page 7 of Applicants' disclosure). Furthermore, a determination as to whether or not message order is to be preserved is based upon a marker associated with the message (see paragraph spanning pages 7 and 8).

On page 3 of the Office Action, the Examiner asserted that "Sche fails to teach explicitly determining whether it is required to preserve the message order." The Examiner then relied upon Allavarpu to teach "determining whether it is required to preserve the message order." As to dependent claims 4 and 13, now respectively incorporated into independent claims 1 and 10, the Examiner asserted the following:

As to claims 4 and 13, Sche teaches the method and the system of claims 1 and 10 wherein a predetermined value of the market indicates that ordering is not required (column 2, lines 35-37, Sche discloses a client module generates a message including the identification number, and sends the message over the communication medium (i.e., there was no queuing or "ordering" to send the message, "order is not required" to send the message over the communication medium)).

Applicants respectfully disagree with the Examiner's analysis, which arrives at the conclusion that Scheussler teaches the limitations previously presented in claims 4 and 13.

As already admitted by the Examiner, Scheussler fails to teach "determining whether it is required to preserve the message order." Applicants' use of the term "determining," means that a decision is made as to at least two options (i.e., message order is to be preserved or message order is not to be preserved). A "determining" step cannot be performed if only one option exists

(i.e., message order is not to be preserved). Therefore, the Examiner's assertions that (i) Scheussler fails to teach determining whether message order is to be preserved yet (ii) Scheussler teaches "a predetermined value of the marker indicates that ordering is not required" are mutually exclusive (i.e., both assertions cannot be correct). Thus, one of the Examiner's assertions is correct and the other assertion is not.

Applicants respectfully submit that the Examiner's second assertion (i.e., Scheussler teaches the limitations previously presented in claims 4 and 13) is not correct. The Examiner cited column 2, lines 35-37 of Scheussler for support to teach these limitations, and for ease of reference this cited passage is reproduced below:

The present invention provides a system and a method of identifying computer users. In one embodiment, a communications network includes several computers connected to a communications medium.

As readily apparent, the Examiner did not derive the claimed "predetermined value of the marker indicates that order is not required" from this passage.

Although the above-identified passage teaches that a message includes an identification number, there is no teaching or suggestion within Scheussler that this identification number is used to determine whether or not message order is to be preserved (i.e., "a predetermined value of the marker indicates that order is not required"). Even assuming that the Examiner's asserted "there was no queuing or 'ordering' to send the message" is correct, the Examiner has failed to establish (i) that a determination was made as to whether or not order is required and (ii) that determination is made based upon the value of a marker associated with the message.

Therefore, even if Scheussler and Allavarpu were combined in the manner suggested by the Examiner, the claimed invention would not result. As previously discussed, the claimed invention is directed to the concept of making a determination as to whether or not message order is to be preserved is based upon a marker associated with the message. Thus, messages may be dispatched for which some messages have their message order preserved and for other messages that are dispatched, the message order does not have to be preserved.

In contrast, neither Scheussler nor Allavarpu, alone or in combination, teach or suggest this concept. Although Allavarpu teaches that "each Proxy Agent instance may have a reply dispatcher, which may schedule replies to that particular client 206 in sequential order," there is no apparent teaching within Allavarpu that the reply dispatcher schedules certain replies in sequential order and schedules other replies so that sequential order is not necessarily maintained based upon a marker associated with the request issued by the client 206.

Thus, for the reasons stated above, even if Scheussler and Allavarpu were combined in the manner suggested by the Examiner, the claimed invention, as recited in claims 1-3, 5-12, and 14-20, would not result. Therefore, Applicants respectfully solicit withdrawal of the imposed rejection of claims 1-3, 5-12, and 14-20 under 35 U.S.C. § 103 for obviousness based upon Scheussler in view of Allavarpu.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the

prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

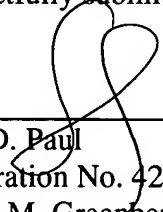
Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: March 28, 2006

Respectfully submitted,



Scott D. Paul
Registration No. 42,984
Steven M. Greenberg
Registration No. 44,725
Christopher & Weisberg, P.A.
200 E. Las Olas Blvd., Suite 2040
Fort Lauderdale, FL 33301
Tel: (954) 828-1488
Facsimile: (954) 828-9122